To: Phil Zahreddine/DC/USEPA/US@EPA[]
Cc: Amit Pramanik [apramanik@werf.org]; Neethling, JB" [JB.Neethling@hdrinc.com]
From: "Clark, Dave"
Sent: Fri 2/5/2010 10:05:11 PM
Subject: FW: Restoration Standards and Nutrient Standards Suggestions?
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Phil – This is the e-mail that I referenced during lunch on Wednesday related to Restoration Standards that I sent to Ephraim King last Fall. I've learned more about what EPA thinks a Restoration Standards might, or could be, in reviewing the proposed numeric nutrient standards for Florida. It appears to me that EPA has put a lot of thought into the section of the proposed Florida standards titled "Alternative Regulatory Approaches and Implementation Mechanisms" that discusses Restoration Standards.

As my note to Ephraim below indicates, I'm trying to get a better understanding of what a Restoration Standard is compared to a Variance. I've been involved in a Variance process for more than a year in Montana and I think we're learning a lot about the process of review and approval of variances that needs to be included in the considerations for application elsewhere. I suspect that there's as much, or more, to be learned about the potential application of a Restoration Standard that could be very important in creating a valuable and meaningful process that balances water quality protection with the appropriate application of treatment technologies.

Any feedback or commentary you can provide would be interesting to discuss. I'm getting a number of questions from folks in Florida who seem quite "excited" about the proposed numeric nutrient standards. I have commented that perhaps one of the most interesting aspects of what EPA is proposing in Florida is the section on "Alternative Regulatory Approaches and Implementation Mechanisms" that discusses Restoration Standards. If we can help foster a dialog about this through the WERF Nutrient Challenge, we'd welcome the opportunity to do so.

Thanks

Dave

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From: Clark, Dave
Sent: Wednesday, December 30, 2009 11:56 AM
To: Phil Zahreddine (zahreddine.phil@epa.gov)
Subject: FW: Restoration Standards and Nutrient Standards Suggestions?

Hi Phil! I hope that you and your family are enjoying the holidays! I guess you got a shot of winter and snow last week.

I wonder if I could ask you for a little feedback on a note that I sent to Ephraim back in October regarding water quality "Variances" for nutrient standards and "Restoration Standards"? I'm working on edits the WERF Regulatory White Paper and I've had a few questions from folks that I'm trying to address in the revisions. The note below explains what I was after: Is there any written guidance on "Restoration Standards" and is it essentially the same thing as a water quality "Variance"?

I wasn't able to get a response from Ephraim, but I'm sure that he's swamped on nutrient issues in general. I'm seeing the water quality Variance issue playing out in a couple of states and I'm wondering if this is going to be a pattern in other states and whether EPA is going to guide the states on the approach?

Thanks and have a Happy New Years!

Dave

From: Clark, Dave
Sent: Monday, October 26, 2009 3:56 PM
To: Ephraim King
Subject: Restoration Standards and Nutrient Standards Suggestions?

Hi Ephraim! I've got a couple of questions and would appreciate any suggestions that you might have.

I've heard you mention "restoration standards" a couple of times in your regulatory talks, most recently at WEFTEC, and I'm not sure that I understand what this means or how it can be used. Is there a reference that I can read to get up-to-speed on how this relates to nutrients?

I also wanted to relate a discussion that we had last week in Montana with the state Department of Environmental Quality and Region 8 on NPDES permitting. The state is planning to move forward with rulemaking for numeric nutrient standards and we met to discuss how NPDES permits would be written since its understood that the in-stream targets would be very low concentrations of nitrogen and phosphorus. The conclusion of this discussion was that virtually every discharger in the state would not be able to meet permit limits back calculated from numeric nutrient standards. Consequently, the DEQ would utilize the provisions of newly passed state Variance legislation to set Temporary Water Quality Standards that dischargers could meet based either on Affordability Criteria or Limits of Treatment Technology.

The conundrum we seem to be facing in Montana is that new regulations for Numeric Nutrient Standards will be so restrictive that we'll need another set of water quality Variance regulations to figure out how to comply. The state Variance legislation requires an alternatives analysis and a case-by-case consideration on setting temporary water quality standards for each permit, which must be repeated every 5 years up to 20 years. The state struggles to stay current with NPDES permitting now. I think that this variance process alone is going to clog up NPDES permitting to a degree that timeframes may exceed what is required for TMDLs.

I'm looking for ideas on how to navigate through this process and would appreciate any suggestions that you have? I don't know if other states have reached this point in the development of their numeric nutrient criteria, or in establishing variance procedures and permitting practices

Thanks in advance for any comments or thoughts that you have on either of these questions!

Dave

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